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In re Application of:	:	
Carlsson et al.	:	
Application No.: 09/868,526	:	DECISION
PCT No.: PCT/SE99/02311	:	
Int. Filing Date: 10 December 1999	:	UNDER
Priority Date: 22 December 1998	:	
Atty. Docket No.: CU-2571	:	37 CFR 1.47
For: Tool Handle	:	

This is in response to the "Submittal Of Missing Requirements Under 35 U.S.C. § 371" filed on 15 April 2002, which is being treated under 37 CFR 1.47(a).

BACKGROUND

This international application was filed on 10 December 1999, and claimed an earliest priority date of 22 December 1998. A copy of the published international application was transmitted to the USPTO on 29 June 2000. A Demand electing the United States was filed on 12 July 2000, which was prior to the elapse of 19 months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired as of midnight on 22 June 2001.

On 19 June 2001, applicants filed, *inter alia*, the basic national fee.

On 05 October 2001, a Notification of Missing Requirements was transmitted to applicants, requiring the submission of an oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

Applicants filed the instant "Submittal..." and surcharge under 37 CFR 1.492(e) on 15 April 2002.

DISCUSSION

As a preliminary matter, the declaration filed on 15 April 2002 is signed by joint inventor Stefan Carlsson, but not by joint inventor Jacek Chalas. However, petitioner refers to Mr.

Carlsson as a "deceased inventor." It is presumed that the Mr. Carlsson signed the declaration before death. If the signature appearing on the declaration is not that of Mr. Carlsson, petitioner is required to notify the USPTO promptly of this fact.

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Petitioner has satisfied requirements (1) and (3).

Regarding requirement (1), the petition fee is being charged to counsel's Deposit Account No. 12-0400, as authorized by the Transmittal Letter filed on 19 June 2001. Thus, requirement (1) has been satisfied.

Regarding requirement (2), the evidence presently of record is insufficient to demonstrate that Mr. Chalas "refuses to execute the application or cannot be reached after diligent effort" within the meaning of 37 CFR 1.47(a). The "Details of refusal of nonsigning joint inventor to sign application papers" states that a copy of the published international application and a combined Declaration and Power of Attorney were sent to Mr. Chalas in registered letters, and refers to "certified mail" return receipts. However, petitioner does not specifically state that the papers were sent to Mr. Chalas at his last known address. Moreover, petitioner has not provided copies of the return receipts. Regarding the telephone call on 17 December 2001, the statement that Mr. Chalas orally refused to sign the declaration is unacceptable because it is based on hearsay. Indeed, it is not clear whether any of the statements included in the "Details of refusal..." are made on the basis of first-hand knowledge, since it is not specified who carried out each of the enumerated actions and since the document is unsigned. Any statement in support of alleged refusal to sign must be made by individual(s) having first-hand knowledge of the facts and circumstances alleged.

Regarding requirement (3), the petition includes a statement of Mr. Carlsson's last known address.

Regarding requirement (4), the declaration filed on 15 April 2002 is not acceptable. Specifically, it is not clear whether Stefan Carlsson signed the declaration for himself only, or whether he also signed it on behalf of Jacek Chalas. MPEP 409.03(a)(A) explains that

All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR 1.63 or 1.175 (see MPEP 602, 605.01 and 1414) and (2) make oath or declaration on behalf of the nonsigning joint inventor as required by 37 CFR 1.64. An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf

of the nonsigning inventor(s), unless otherwise indicated.

Here, it is "otherwise indicated" that an agent of assignee, Mats Bjelksjö, rather than Mr. Carlsson, seeks to sign on behalf of Mr. Chalas. As such, it would be inappropriate to treat the declaration signed by Mr. Carlsson as though Mr. Carlsson was also signing on behalf of Mr. Chalas.

For the reasons discussed above, it not would be appropriate to grant the requested relief on the basis of the present record.

CONCLUSION


The petition is **DISMISSED**, without prejudice.

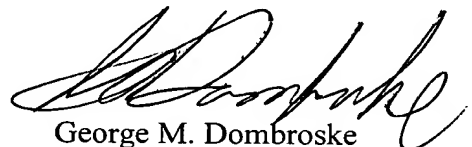
The \$130.00 petition fee is being charged to counsel's Deposit Account No. 12-0400.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Applicant is required to file either (1) an oath or declaration executed by the missing inventor and the legal representative of the deceased inventor and a request under 37 CFR 1.42, or (2) an oath or declaration executed by the legal representative of the deceased inventor on behalf of both the deceased inventor and the missing inventor, a request under 37 CFR 1.42, and a renewed request under 37 CFR 1.47.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


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